Supreme Court, U.S.
FILED
APR 11 1987
JOSEPH F. SPANIOL, JR.
CLERK

No. 86-1530

In The

Supreme Court of the United States

October Term, 1986

AETNA CASUALTY AND SURETY COMPANY, A CORPORATION; AND DORIS GENEVA GREER, AS ADMINISTRATRIX DBNCTA OF THE ESTATE OF CHARLES FURMAN GREER, DECEASED,

Petitioners,

v.

SECURITY FORCES, INC. AND SECURITY INSURANCE COMPANY OF HARTFORD,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENT SECURITY FORCES' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the unanimous South Carolina Appellate Courts (affirmed by the Supreme Court by denying a writ of certiorari) erred in holding:

(1) That the New York judgment has neither *res judicata* nor collateral estoppel effect over the proceedings in South Carolina because the Appellate Division expressly deleted from the trial court's order its attempted resolution of both the claims and issues involved in the litigation in South Carolina?

(2) There can be no *res judicata* effect for at least the reason that the New York judgment does not finally determine the merits of the claim now being raised in the South Carolina litigation?

(3) There is no collateral estoppel effect because the issues involved in South Carolina were not decided by the New York courts?

TABLE OF CONTENTS

Page(s)

QUESTIONS PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

STATEMENT OF THE CASE 2

I. The Parties And The Nature Of The Claim 2

II. The Proceedings Below And The Issues For Review 4

REASONS FOR DENYING THE WRIT 6

I. There Is No Special And Important Reason To Review The South Carolina Court Order 6

A. The South Carolina Actions Do Not Involve The Same Parties 6

B. The New York Action Did Not Involve The Identical Issues In The South Carolina Actions 8

CONCLUSION 8

TABLE OF AUTHORITIES

Page(s)

CASES:

Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association, 455 U.S. 691 (1982) 7

OPINIONS BELOW

Respondents have two objections with Petitioners' presentation of the opinions below. First, they cite and copy an "Amended Order of the Circuit Court of Spartanburg County, South Carolina" which appears on pages 26-43 of its Appendix.

The original Order by the lower court was dated July 20, 1984. Notice of Appeal to the South Carolina Supreme Court was served upon opposing counsel on August 2, 1984. An Amended Order was signed by the lower court judge on August 22, 1984, twenty days after he had lost jurisdiction of the case. Respondents objected to the inclusion of this Oruer on appeal, and the South Carolina Supreme Court remanded the issue of its inclusion to the original lower court judge. On October 31, 1984, he issued his order settling the record which excluded the Amended Order due to his lack of jurisdiction to issue it once the case was on appeal to the Supreme Court. Thus, the Amended Order was not considered by the South Carolina appellate courts and Petitioners did not object to the lower court's omission. Inclusion of this Order at this stage is inappropriate and unfounded.

Second, the Petitioners have added a footnote to the New York lower court order that was not a part of the original order (p.55 n.1). This gratuitous footnote also misstates the holding of the South Carolina lower court. That court did not rule that "Greer's estate could not be liable because the Aetna policy is its only undistributed asset". The court relied upon various grounds, but the fact that the insurance policy was the only undistributed asset was not one.

STATEMENT OF CASE

I. The Parties And The Nature Of The Claim

It is important to understand the players in order to determine whether the Full Faith and Credit Clause of the Constitution is involved in this matter. In July of 1970, Security Forces and Hystron Corporation had in effect a contract under which Security Forces provided Hystron with guard services to protect Hystron's property in Spartanburg County. A Hystron superior asked a Security Forces guard (Greer) to drive a Hystron executive, Mr. Biener (and his family) to the airport in a car owned by Hystron and insured by Aetna. The Aetna insurance policy made any permissive user an additional insured as long as he was operating an owned automobile. There is no question that Mr. Greer was a permissive user and was operating a car that was listed on the Aetna policy. While in route to the airport, Greer negligently drove the car into a bridge abutment killing Mr. Biener's wife and injuring other members of the family.

The Bieners brought suit in the State of New York against Hystron for injury and death. Hystron joined Security Forces as a Third-Party Defendant in that suit, seeking contractual indemnity from Security Forces based upon their agreement for guard services. Security Forces then attempted to join Greer's estate as a Fourth-Party Defendant seeking implied indemnity from their employee for its vicarious liability, if any, to Hystron. The estate, in turn, sought to join Aetna as a Fifth-Party Defendant seeking indemnity (as an insured) from Aetna for its liability, if any, to Security Forces. A New York trial court ruled it did not have personal jurisdiction over the estate. (Petition for Writ of Certiorari page 58) Nevertheless,

the trial court's order set forth limits upon the right of Security Forces to seek indemnity from the estate, and the estate to seek indemnity from Aetna.

The parties to the action stipulated damages to be $450,000.00. The New York trial court ruled that Hystron was directly liable to the Bieners and that Security Forces was obligated to indemnify Hystron for Hystron's liability to the Bieners under the hold harmless provision of the contract for guard services. On appeal, the Appellate Division of the New York Supreme Court, in a 1980 decision, affirmed these aspects of the trial court's order. Without explanation, however, the Appellate Division modified the order to delete the limitation imposed on any future actions relating to the Fourth and Fifth party actions against the estate and Aetna respectively. (Petition for Writ of Certiorari page 61)

In October of 1983 Security Forces filed an action in the Court of Common Pleas, Spartanburg County, South Carolina, against the estate of its former employee, Greer. The action sought implied indemnity based on the right of a master to maintain a suit against a servant where alleged misconduct of the servant has given rise to vicarious liability of the master. This was precisely the Fourth party action the New York trial court ruled it did not have jurisdiction over, and the appellate court ruled could not be limited.

Aetna and the Administratrix of Greer's estate then brought this declaratory judgment action against Security Forces and Security Insurance (not a party to the underlying proceeding) seeking an order that neither Aetna nor the estate could be liable to Security Forces in connection with its pending suit against the estate.

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II. The Proceedings Below And The Issues For Review

The lower court granted summary judgment in favor of Petitioners, focusing upon Aetna's right to be subrogated to the rights of Hystron, its insured. Petitioners raised the issue of Full Faith and Credit, and stated in their Petition to this Court that the lower court held that the Full Faith and Credit Clause required the South Carolina courts to follow the New York court's ruling. (Petition for Writ of Certiorari, p. 10). However, a review of the lower court's order shows otherwise.

The lower court stated that Petitioner's argument with regard to Full Faith and Credit was "appealing", but that "it cannot completely agree with it". (Appendix to Petition for Writ of Certiorari, p. 23). The Circuit Judge went on to state:

> "... Clearly, if the opinion of the New York trial court were the final word of the New York courts, the plaintiffs' arguments would be correct and the full faith and credit clause would alone compel this court to grant the declaratory relief that the Plaintiffs' requested. Because the New York appellate court modified the judgment of the trial court, however, this court is unable to determine the exact effect that the New York appellate court intended its judgment to have. It may have modified the judgment solely because of its lack of jurisdiction over the fourth and fifth party defendants or it may have intended some other result. Rather than speculate on such matters, this Court prefers to rely for its decision on the clear language of the agreements discussed above and that this court feels adequately dispose of the plaintiffs' motion."

> ". . . But this court cannot say with certainty that that doctrine (Full Faith and Credit) alone disposes of the Plaintiff's motion since the precise effect of the New York judgment is not clear . . ." (Petition for Writ of Certiorari, pp. 23-24).

Petitioners again raised the Full Faith and Credit argument before the Court of Appeals of South Carolina. The unanimous court rejected the argument. They held that the Full Faith and Credit Clause of the Federal Constitution does require courts of one state to give such effect to a judgment of the sister state as it would have in the sister state. Hence, they focused on whether the New York courts would accord this previous judgment preclusive effect over either the declaratory judgment action of Aetna or the pending suit against the Greer estate. The Court then stated that under the Full Faith and Credit Clause the courts extend both *res judicata* and collateral estoppel effect to state court judgments.

The unanimous court agreed that the New York judgment had neither *res judicata* nor collateral estoppel effect over the proceeding in South Carolina when the Appellate Division of New York expressly deleted from the trial court's order its attempted resolution of both the claim and litigation involved in South Carolina. The court concluded that there could be no *res judicata* effect for ". . . at least the reason that the New York judgment does not finally determine the merits of the claim now being resolved in this litigation . . . ". (Appendix to Petition for Writ of Certiorari, p. 43) They further held that there was no collateral estoppel effect on the issues involved here since they were not decided by the New York courts. *Id.* Instead, the Appellate Division's ". . . deletation of

aspects of the trial court's order left the issues unadjudicated . . . ". *Id.*

In summary, whether or not Security Forces can be allowed to seek recovery against its servant for his alleged misconduct has never been decided. The parties to the underlying lawsuit, Security Forces and the estate of Greer, have never had their day in Court. The New York courts expressly declined to limit such an action. Therefore, the issue for review is whether the South Carolina courts have failed to give Full Faith and Credit to a sister state's ruling which, on its face, allows the action to proceed.

REASONS FOR DENYING THE WRIT

I. There Is No Special And Important Reason To Review The South Carolina Court Order.

A. The South Carolina actions do not involve the same parties.

Petitioners cloak themselves in the Full Faith and Credit Clause in requesting this Court to review the unanimous decision of the South Carolina appellate courts. They boldly state that the New York court holdings involve the same parties and identical issues. (Petition for Writ of Certiorari, p. 11) This is not true, since the New York court itself held that it had no jurisdiction over the Estate nor the Estate claim against Aetna (The Fourth and Fifth Party actions) (Petition for Writ of Certiorari, p. 58). The parties are not the same.

The only case Petitioners cite as authority for their position (other than cases citing black letter law) is that

of *Underwriters National Assurance Company v. North Carolina Life and Accident and Health Insurance Guaranty Association,* 455 U.S. 691 (1982). However, the facts of that case are vastly different from the facts of this case.

In *Underwriters,* the North Carolina Association appeared in Indiana to seek a determination of its rights to the $100,000 deposit. The Indiana court expressly ruled that it had personal jurisdiction over the Association (through its intervention) and subject matter jurisdiction over the funds. The Association had at that time the right to object to subject matter jurisdiction, but declined. This Court, per Justice Marshall, held that Full Faith and Credit applied—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment. (455 U.S. at 706).

Unlike *Underwriters,* the South Carolina court's review of the New York decision did not reveal a record which fully and fairly considered the question of jurisdiction over Greer or Greer's right to be insured by Aetna under the insurance policy. On the contrary, a review of the New York court order showed that both the lower and appellate court held that no jurisdiction existed, and therefore there would be no limitations on future actions. Therefore, Petitioner's statement that the New York courts had jurisdiction over the parties before it to determine Security Forces' right to indemnification is inaccurate. The Estate of Greer and Greer's subsequent request to be insured by Aetna were not before the New York courts.

B. The New York action did not involve the identical issues in the South Carolina actions.

Aetna issued an insurance policy insuring Hystron for automobiles identified on the policy. The New York action for negligence was against an Aetna insured (Hystron) in which the New York court held Hystron liable. The New York court further held that Hystron, based on a contract with Security Forces, could be indemnified by Security Forces based on this contract. Aetna also insured a permissive user, Mr. Greer. The issue of whether or not he was liable to his employer and whether or not Aetna should defend him was not decided in New York. The lower court in New York attempted to decide this issue, but it was as reversed by the Appellate Division. The Appellate Division's Order expressly stated that there would be no limitations on Security Force's right to seek indemnification from the Estate of Greer, and that there would be no limintations upon the Estate of Greer's right to request Aetna to defend it and provide coverage under its separate duty to an additional insured (Petition for Writ of Certiorari, p. 61). The South Carolina cause of action for employer-employee indemnity is entirely different and distinct from the New York cause of action for negligence and contractual indemnity between Hystron and Security.

CONCLUSION

Respondents are only seeking their day in court which the New York courts allowed them to do back in 1980. In order for the Full Faith and Credit Clause to apply, there

must be a controlling decision from the original state court. This particular state court judgment has neither *res judicata* nor collateral estoppel effect over the proceedings in South Carolina because the Appellate Division of New York expressly deleted from the trial court's order its attempt at resolution of both claims and issues involved. There can be no *res judicata* effect for at least the reason the New York judgment does not finally determine the merits of whether Security Forces can be indemnified for the negligence of its employee. Further, there can be no *res judicata* effect because the New York judgment does not finally determine whether the Estate of Greer should be defended by its insurer and provided coverage. Finally, there is no collateral estoppel effect because the issues involved in South Carolina were simply not decided by the New York courts.

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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